

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:08CR133
)	
v.)	
)	
FERNANDO HERNANDEZ,)	ORDER
)	
Defendant.)	
)	

This matter is before the court on the defendant's motion for an order compelling his attorney to provide copies of his criminal case file. Filing No. 37. The defendant asserts that he needs the documents in order to proceed pro se in postconviction proceedings and that his attorney refuses to provide the documents. The defendant was sentenced on January 16, 2009. At this time, he has not filed an appeal nor a motion to vacate or set aside his sentence under 28 U.S.C. § 2255. The court finds the motion is premature at this time and should be denied.

Under Rule 6(b) of the "Rules Governing Section 2255 Cases in the United States District Courts," a party requesting discovery must provide reasons for his requests and and must specify any requested documents. Also, under 28 U.S.C. § 2250, if a petitioner has been permitted to prosecute a petition for a writ of habeas corpus in forma pauperis, "the clerk of any court of the United States shall furnish to the petitioner without cost certified copies of such documents or parts of the record on file in his office as may be required by order of the judge before whom the application is pending." 28 U.S.C. § 2250. The statute contemplates the filing of a motion for collateral review of a conviction before free copies of the record are furnished to the moving party. See Chapman v. United

States, 55 F.3d 390, 390-91 (8th Cir. 1995) (stating that any request for a free transcript prior to the filing of a section 2255 motion is premature); United States v. Herrera-Zaragosa, 84 Fed. App'x 728, 729 (8th Cir. 2004) (per curiam) (unpublished opinion).

Accordingly, the court finds the motion should be denied at this time without prejudice to reassertion after filing a section 2255 petition.

IT IS ORDERED:

1. The defendant's motion to compel (Filing No. 37) is denied, without prejudice to reassertion.
2. The Clerk of Court is directed to mail to the defendant at his last known address the forms and instructions for instituting a proceeding under 28 U.S.C. § 2255

DATED this 1st day of February, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

*This opinion may contain hyperlinks to other documents or Web sites. The U.S. District Court for the District of Nebraska does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide on their Web sites. Likewise, the court has no agreements with any of these third parties or their Web sites. The court accepts no responsibility for the availability or functionality of any hyperlink. Thus, the fact that a hyperlink ceases to work or directs the user to some other site does not affect the opinion of the court.